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2 STATE OF CALIFORNIA  
3 DEPARTMENT OF INDUSTRIAL RELATIONS  
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5 DECISION ON ADMINISTRATIVE APPEAL  
6 IN RE: SPRINGS GATEWAY BUILDING PARTNERSHIP  
7 PW CASE NO. 97-007  
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10 I. INTRODUCTION

11 This matter arises out of a coverage request filed by the  
12 Center for Contract Compliance for a project known as the Springs  
13 Gateway Building, which was constructed by the Springs Gateway  
14 Building Partnership and is now used as the Riverside County  
15 Clerk Recorder/Registrar of Voters Building. The issue presented  
16 on appeal is whether Labor Code section 1720.2<sup>1</sup> applies to the  
17 Springs Gateway Building and, therefore, prevailing wages should  
18 have been paid to the workers engaged in its construction. By  
19 determination of July 25, 1997, the Acting Director of Industrial  
20 Relations, Mr. John C. Duncan, found that the project was covered  
21 under section 1720.2. The Magnon Group (hereinafter "Magnon"),  
22 the developers of the project, filed a timely appeal.  
23

24 II. PROCEDURAL HISTORY

25 On March 24, 1997, Mr. Bill Quisenberry of the Center for  
26 Contract Compliance wrote a letter to Ms. Dorothy Vuksich, Chief  
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28 <sup>1</sup> All further statutory references are to the Labor code unless  
otherwise specified.

1 of the Division of Labor Statistics and Research ("hereinafter  
2 "DLSR"), requesting a coverage determination for the Springs  
3 Gateway Building and provided Ms. Vuksich with a copy of the  
4 lease. DLSR, after contacting Magnon, received a response to its  
5 request for information from Magnon dated May 30, 1997.<sup>2</sup> The  
6 Office of the Director Legal Unit also sought additional  
7 documentation from Magnon to assess the applicability of section  
8 1720.2 on June 23, 1997. On July 25, 1997, the Director of  
9 Industrial Relations issued a determination finding coverage of  
10 the project pursuant to section 1720.2

11 On August 22, 1997, attorneys for Magnon filed a Notice of  
12 Appeal. On September 10, 1997, a staff attorney in the Office of  
13 the Director Legal Unit wrote to attorneys for Magnon and  
14 requested that it comply with the regulations and provide the  
15 basis for its appeal and supporting documentation by September  
16 19, 1997. Magnon asked for an extension to September 26, 1997,  
17 and asked for a second extension to October 13th, both of which  
18 were granted. Magnon filed its completed appeal on October 17,  
19 1997, received October 20th. On October 28, 1997, Magnon was  
20 asked to file proofs of service on both the Center for Contract  
21 Compliance and the awarding body, Riverside County. Those were  
22 received on November 3rd. On November 12th, Magnon was asked for  
23 documents that were apparently omitted from a prior submission or  
24 misplaced. Also on November 12th, the Center for Contract  
25 Compliance was asked to file its response to the appeal not later  
26 than December 15th. On December 1st, Mr. Quisenberry of the  
27 Center for Contract Compliance wrote and stated that he would not

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<sup>2</sup>

There was an additional request for information on April 4th, as

1 be filing a response to the appeal. On December 5, 1997, the  
2 parties were informed that the matter stood submitted and that a  
3 decision would issue in the shortest time practicable.  
4

### 5 III. STATEMENT OF RELEVANT FACTS

6 In October 1995, Riverside County issued a Request for  
7 Proposal (RFP) for design and construction of a new building to  
8 house the County Clerk, County Recorder, and Registrar of Voters.  
9 The RFP specified the total area of the building to be  
10 constructed; specified six areas within the building and the  
11 square footage for each (e.g., General Office Space 39,300 square  
12 feet; Operations and Warehouse, 31,000 square feet; Archive  
13 Storage, 10,000 square feet); and required a site within the  
14 boundaries of the City of Riverside.

15 On some date between October 1995 and January 9, 1996,  
16 Magnon submitted to Riverside County a construction proposal for  
17 a building meeting the criteria set out in the RFP, which  
18 proposed an agreement by the county to lease the building to be  
19 constructed.

20 On January 9, 1996, the Riverside County Board of  
21 Supervisors adopted an order accepting the Magnon proposal for  
22 the Clerk/Recorder/Registrar building, and directed the County  
23 Executive Officer to negotiate a final full service lease for the  
24 project. A design and building schedule for the "Riverside  
25 County Clerk, Recorder and Registrar of Voters Facility" was  
26 prepared by the developer and an architectural firm sometime in  
27 January or February 1996.  
28

well as a request for the construction contract made in the last week of May.

1 By April 1, 1996, the County General Services Agency  
2 negotiated a 20-year lease with Magnon for a building of 103,000  
3 square feet, and recommended that the Board of Supervisors  
4 approve the lease. The internal County memorandum dated April  
5 1st provides details of the lease agreement. The lease allows  
6 the County to purchase the building at a series of decreasing  
7 prices during the 20-year lease period. According to Exhibit "J"  
8 to the lease, at the end of the 20-year period, the purchase  
9 price is one dollar. By terms of the lease, the County has  
10 exclusive use of the entire building.

11 On May 30, 1996, Magnon signed a construction agreement with  
12 the Springs Gateway Building Partnership calling for construction  
13 of the building. The Springs Gateway Building Partnership was  
14 designated as "Owner." Magnon was identified as "Contractor."<sup>3</sup>  
15 Raymond Magnon signed the agreement on behalf of both parties: as  
16 president of Magnon and as general partner in the Springs Gateway  
17 Building Partnership. Douglas Magnon also signed as general  
18 partner in the partnership. (The two companies list the same  
19 suite in a Riverside building as their address.) A May 30, 1997,  
20 letter from counsel for the building Partnership and Magnon to  
21 DLSR states that this lease was signed after construction began.

22 On June 18, 1996, the County Board of Supervisors approved  
23 the 20-year lease of the entire building, as negotiated by the  
24 General Services Agency. The lease agreement includes a  
25 provision which says that "Lessor recognizes and understands that  
26 the construction of the leased premises may be subject to the

27  
28 <sup>3</sup> Because Magnon, as the Contractor, would be liable under section  
1775 for any back wages or penalties due it will be referred to as the  
interested party throughout this decision on appeal.

1 provisions contained in the California Labor Code (commencing  
2 with section 1720) relating to general prevailing wage rates and  
3 other pertinent provisions herein." Paragraph 9 of the lease  
4 specifies that the building Partnership agreed to provide tenant  
5 improvements in an amount not to exceed \$2,575,00.00 to the  
6 County. In addition, Magnon and the County agreed that should  
7 Magnon spend less than the maximum amount Magnon would either pay  
8 the County the difference or reduce the base rent amount set  
9 forth in Exhibit B to the lease. According to paragraph 9(a) of  
10 the lease, the tenant improvements were to be completed by March  
11 15, 1997. Paragraph 9(a) also states that the tenant  
12 improvements are to be made in accord with exhibits F, G, and H  
13 to the lease and these exhibits are to be considered part of the  
14 lease and each shall be approved by the County.

15 Paragraph 9(c) requires Magnon to provide the County with  
16 "As-Built" drawings showing every detail of the improvements  
17 including, but not limited to, electrical and plumbing  
18 improvements.

#### 20 IV. DISCUSSION

##### 22 A. No Hearing is Required.

23  
24 Magnon requests that the Director hold a hearing to allow it to  
25 present evidence in support of its position that the project is not  
26 subject to the prevailing wage law. 8 Cal. Code Regs. section  
27 16002.5(b) states that: "The decision to hold a hearing is within the  
28 Director's sole discretion." Because I find that the project is

1 subject to the requirement to pay prevailing wages as a matter of law  
2 and because the materials submitted supply the necessary facts upon  
3 which to base a decision and no significant factual question is at  
4 issue, no hearing is required and the appeal is decided on the  
5 evidence previously submitted.  
6

7 B. Section 1720.2 Applies to the Springs  
8 Gateway Building Because Significant Construction in  
9 the Form of Tenant Improvements Occurred After the  
10 Lease was Signed and was done Specifically in Accord  
11 with Plans, Specifications, or Criteria Approved by  
12 the County of Riverside.

13 Section 1720.2 provides that a building is a public work if:

14 For the limited purposes of Article 2 (commencing with  
15 Section 1770) of this chapter, "public works" also means any  
16 construction work done under private contract when all of  
17 the following conditions exist:

- 18 (a) The construction contract is between private persons.
- 19 (b) The property subject to the construction contract is  
20 privately owned, but upon completion of the  
21 construction work, more than 50 percent of the  
22 square feet of the property is leased to  
23 the state or a political subdivision for its use.
- 24 (c) Either of the following conditions exist:
  - 25 (1) The lease agreement between the lessor and the state  
26 or political subdivision, as lessee, was entered  
27 into prior to the construction contract.
  - 28 (2) The construction work is performed according to  
plans, specifications, or criteria furnished by  
state or political subdivision, and the lease  
agreement between the lessor and the state  
or political subdivision, as lessee, is entered  
into during, or upon completion of, the  
construction work.

24 Magnon contends that section 1720.2 does not apply to  
25 construction of the Springs Gateway Building because the  
26 building shell was constructed under a construction contract  
27 signed 18 days before the lease was signed. The thrust of  
28 Magnon's argument is that section 1720.2 (AB 3235 by Assemblyman

1 Dunlap) was meant only to cover construction of a completed  
2 building and not alterations. Section 1720.2 refers to "any  
3 construction," whereas section 1720(a) applies to "construction,  
4 alteration, demolition, or repair work done under contract."  
5 Essentially, Magnon argues that the Department cannot claim that  
6 "tenant improvements" is included in section 1720.2 as "[A]ny  
7 construction work done under private contract" because there was  
8 a construction contract before there was a lease.

9 Although no cases define "any construction work," "[a]s one  
10 thinks of 'construction' one ordinarily considers the entire  
11 process, including construction of basements, foundations,  
12 utility connections and the like, all of which may be required  
13 in order to erect an above ground structure." Priest v. Housing  
14 Authority (1969) 275 Cal.App.2d 751, 756, 80 Cal.Rptr. 145,  
15 149.<sup>4</sup> That same case notes that "alteration" in section 1720  
16 includes not only alteration of buildings but also of land  
17 itself by rooting up foundations, buried pipe, etc. Id. at 149.  
18 "Alteration" thus overlapped with "demolition."

19 The term "any construction work" in section 1720.2 is  
20 broader than just "construction" in section 1720. One reason  
21 that "alteration, demolition and repair" are absent from section  
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23 <sup>4</sup> Here, the operative word is "any" as it modifies the phrase  
24 "construction work." Webster's New Collegiate Dictionary defines "any" as:  
25 "all, every, the maximum or whole of something." Reliance upon the  
26 dictionary meaning of words is an acceptable method of statutory  
27 construction. Mercer v. Department of Motor Vehicles (1991) 53 Cal.3d,  
28 755, 763 280 Cal.Rptr. 745, 751. In the absence of any compelling  
countervailing consideration, none of which has been shown herein, courts  
(and by extension, administrative agencies) must assume that the  
Legislature says what it means and means what it says. Tracy v. Municipal  
Court (1978) 22 Cal.3d 760, 764 150 Cal.Rptr. 785, 787; People v. Rodriguez  
(1963) 222 Cal.App.2d 221, 227, 34 Cal.Rptr. 907, 912.

1 1720.2 is because public entities rarely require demolition, or  
2 alteration of a bare land site (as in Priest), preparatory to  
3 leasing an office. The statute inferentially supports this  
4 explanation because it uses the term "assignable square feet."  
5 This term contemplates measurement of built-up space within a  
6 structure.<sup>5</sup>

7 Priest, supra, is the only case on the definitional section  
8 of section 1720, and its discussion of "alteration" supports the  
9 view that there can be overlap among the terms used in section  
10 1720(a). The case held that the leveling of housing and digging  
11 up of pipes was covered by section 1720's term "demolition" and  
12 went on to say that alteration could be of either buildings or  
13 ground itself. If "alteration" and "demolition" can overlap in  
14 section 1720(a), then "any construction work" in section 1720.2  
15 may describe some of the same work on buildings as "alteration"  
16 in section 1720(a).

17 The "tenant improvements" amount to significant interior  
18 construction to meet the needs of the tenant, the County of  
19 Riverside.<sup>6</sup> The work here, at minimum, entailed plumbing and  
20 electrical work as well as interior site preparation that could  
21 entail building walls, adding or eliminating doorways, painting  
22 and carpeting floors. The lack of specificity as to what  
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24 <sup>5</sup> Magnon cites 60 Market Street Associates v. Hartnett (1990) 551  
25 N.Y.Supp.2d 346, 153 A.D.2d 205 in support of its position that leases are  
26 not covered by the prevailing wage law. This may be true under New York's  
27 prevailing wage law. California has enacted section 1720.2 specifically to  
make the prevailing wage law applicable to leased premises in limited  
circumstances.

28 <sup>6</sup> Decision of Appeal, 2424 Arden Way, PW No. 91-037 (April 20, 1992);  
2420 Stockton Blvd., PW No. 92-038 (February 23, 1993).



1 exactly was done for \$2,575,000.00 is due in part to the  
2 incomplete package of lease documents submitted to date.<sup>7</sup> The  
3 cost of the improvements, \$2,575,000.00, requires that I assume  
4 that significant construction took place after the lease was  
5 signed and according to plans, specifications or criteria  
6 approved by the County of Riverside in accord with the  
7 construction schedules submitted by Magnon as Exhibit "F" to the  
8 lease.

9  
10 C. This Project Is Also Covered Under Section  
11 1720(a) Because the "Tenant Improvements" are  
12 "Construction" Under Contract Paid for with Public  
Funds.

13 As noted above, the lease agreement and Exhibit B to the  
14 lease discuss an arrangement wherein the tenant improvements are  
15 paid for by the County of Riverside by amortizing the costs over  
16 the life of the lease. The cost of these improvements is added  
17 into the base rent specified in the lease and are being paid for  
18 with public funds during the course of the lease. Therefore,  
19 consistent with past determinations,<sup>8</sup> I find that there is  
20 construction under contract paid for with public funds as these  
21 terms are used in section 1720(a).

22  
23 <sup>7</sup> According to Magnon certain exhibits to the lease were not  
24 immediately available. The cost of the tenant improvements strongly supports  
25 the inference that significant construction was performed. 8 Cal.Code.Reg.  
26 section 16001(a)(3) permits the director to draw an adverse inference, close  
the record, and render a decision based on the existing record when requested  
material are not forthcoming. Given that existing evidence supports a finding  
of significant construction in the form of tenant improvements no negative  
inference is required.

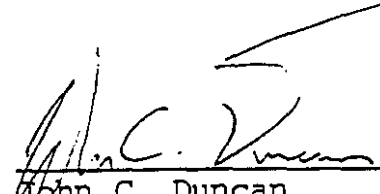
27 <sup>8</sup> Department of Corrections-Community Correctional Facilities, PW No.  
28 96-006 (June 11, 1996); Brawley Airport Hanger Project, PW No. 96-002 (June 3,  
1996); Customer Services-City and County of San Francisco Building Lease  
(March 18, 1987).

V. CONCLUSION

For the foregoing reasons, Magnon's appeal requesting that the Department reverse its prior determination is denied.

DATED:

1/15/98

  
John C. Duncan  
Acting Director of the  
Department of Industrial  
Relations